IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.48 OF 2005

Mrs. Rupali Ankit Shah & Anr. ... Applicants

Vs.

Mr. Ankit Harin Shah ... Respondent

Mr. Sandeep V. Marne for the applicants.

None for the respondent.

**CORAM : SMT. RANJANA DESAI & D.B. BHOSALE, JJ.**

**DATED : 23RD FEBRUARY, 2006.**

**ORAL JUDGMENT:**- [Per Smt. Ranjana Desai, J.]

1. The applicants are the original petitioners in Petition E No.612 of 2003 filed in the family court at Pune for claiming maintenance under section 125 of the Criminal Procedure Code (for short, "the Code"). By the impugned order dated 18/8/2004, the Family Court, Pune has directed the respondent-husband to pay monthly maintenance allowance of Rs.2,000/- to applicant 1 -– wife and Rs.1,000/- to applicant 2, who is the minor son, from the date of petition i.e. 1/12/2003. The family court has also awarded costs of Rs.1,000/- to the applicants.

2. It appears that the respondent had engaged Ms. R.K. Mehta as his advocate. But Ms. R.K. Mehta has never remained present in the court. The notings on the farad show that on 13/9/2005 though the respondent was served, he did not remain present and, therefore, fresh notice was issued to him. On 11/10/2005, the respondent was present in the court with his mother. This court adjourned the matter to 24/11/2005. However, it was observed by this court that the respondent was reluctant to clear the arrears of maintenance. This court further observed that it will be open to the applicants to execute the order, which was already passed in their favour to recover the arrears. The matter was adjourned for consideration of prayer for enhancement of maintenance amount. On 24/11/2005, the respondent was present in the court. This court noted that the respondent has paid only a sum of Rs.17,000/- towards the arrears of maintenance as per the family court's order. It was pointed out that the total arrears of maintenance was around Rs.70,000/-. The respondent undertook that he will pay at least an amount of Rs.15,000/- by way of demand draft before the next adjourned date. That undertaking was accepted by this court. Thereafter, the matter was adjourned to 12/12/2005. The learned counsel for the applicants says that the respondent has not complied with this undertaking. On 12/12/2005, the respondent remained absent. Today also, the respondent is not present in the court. This conduct of the respondent makes it clear that he is evading paying maintenance to the applicants.

3. So far as the financial position of the respondent and his monthly income is concerned, the family court has observed as under :

> "However, respondent husband in his cross-examination admitted about running and dealing in business of tiles trading in Mulund, Mumbai, under the name and style of "Yash Ceramics". He further stated that he has engaged and employed two workers for this particular purpose. He further conceded the fact of owning an Indica car bearing Registration No.MH-04-E-7293. Though he asserted about earning Rs.5,000/- per month from this trade and has placed his income tax returns vide Exh.21 on record but looking to the nature of the business, his way and standard of living, his family background coupled with the fact that he himself has asserted (though without any foundation) about his wife being interested in his assets, properties only, even on conjectures and surmises his monthly income can be conveniently held in between Rs.15,000/- to Rs.20,000/-. Apparently, he has no other dependent on his shoulder as his parents and brothers are well settled and engaged in their own business. Further, he is an able bodied person capable of earning amount sufficient to fulfil

his needs and that of his family."

4. We find that the above observations of the family court are borne out by evidence. It is, therefore, clear that the respondent is a man of sufficient means. He earns Rs.15,000/- to Rs.20,000/- per month and there is no dependent on him. It is also established that the respondent has wilfully refused and neglected to maintain the applicants.

5. So far as applicant 1 is concerned, she is not earning. Applicant 2 is the minor son. He is seven years' old and is schooling. The record shows that the school expenses of applicant 2 are about Rs.24,730/- per year which is bound to increase as applicant 2 grows up and pursues further studies. Considering the facts that the respondent has not complied with the order of this court dated 24/11/2005; that he has flouted the undertaking given to this court and that he has remained absent in this court, we are of the opinion that the respondent has no desire to carry out his obligation of maintaining his wife and child. His sound financial condition, the need of the applicants and the spiralling price rise persuade us to hold that the maintenance awarded by the family court is inadequate. Even if it is admitted that the respondent earns only Rs.15,000/- to Rs.20,000/- per month, in our opinion, the maintenance amount needs to be increased. The applicants have prayed for an amount of Rs.25,000/- per month as maintenance. We feel that the said claim as of today appears to be exorbitant. But in the circumstances of the case, in our

opinion, applicant 1 should be awarded maintenance at the rate of Rs.3,500/- per month and applicant 2 should be awarded maintenance at the rate of Rs.2,500/- per month. Hence, we pass the following order :

**O R D E R**

6. The respondent Mr. Ankit Harin Shah shall pay maintenance at the rate of Rs.3,500/- per month to applicant 1 –- wife Mrs. Rupali Ankit Shah and Rs.2,500/- per month to applicant 2 –- minor son – Kumar Dhruv Ankit Shah from the date of the petition i.e. 1/12/2003. We maintain the order of costs quantified at Rs.1,000/-.

7. It will be open to the applicants to approach the learned Magistrate for enhancement of maintenance if circumstances so demand, under section 127 of the Code. With the above modification, the impugned order is confirmed. The Criminal Revision Application is disposed of in the aforestated terms.

[SMT. RANJANA DESAI, J.]

[D.B. BHOSALE, J.]